

Office of the Secretary of Defense

§ 42.5

(i) An offense listed in 18 U.S.C. 2516(1); or

(ii) Fraud against the Government or any other offense dangerous to life, limb, or property and punishable under title 18 of the U.S. Code by death or confinement for more than 1 year; or

(iii) Any conspiracy to commit any of the foregoing offenses.

(e) Consensual interceptions of wire and oral communications shall be undertaken only when at least one of the parties to the conversation has consented to the interception and when the investigation involves:

(1) A criminal offense punishable, under the United States Code or Uniform Code of Military Justice, by death or confinement for 1 year or more; or

(2) A telephone call involving obscenity, harassment, extortion, bribery, bomb threat, or threat of bodily harm that has been made to a person authorized to use the telephone of a subscriber-user on an installation, building, or portion thereof, under Department of Defense jurisdiction or control, and when the subscriber-user has also consented to the interception.

(f) The prohibitions and restrictions of this part apply regardless of the official use or dissemination of the intercepted information. Any questions as to whether the use of a particular device may involve prohibited wire or oral interception shall be submitted with supporting facts through channels to the general counsel of the Department of Defense for resolution.

(g) No otherwise privileged wire or oral communication intercepted in accordance with this part shall lose its privileged character.

§ 42.4 Waivers.

Waivers of the requirements enunciated in this part will be authorized on a case-by-case basis only when directed in writing by the Secretary of Defense. Waivers will be authorized only under the most limited circumstances and when consistent with applicable law.

§ 42.5 Responsibilities.

(a) The Department of Defense General counsel or a single designee, shall:

(1) Determine whether to approve or deny requests for authorization to con-

duct nonconsensual interceptions under this part (§ 42.7(a)(1) (i) and (ii)).

(2) Determine whether to seek Attorney General authorization for emergency nonconsensual interceptions (§ 42.7(a)(1)(iii)).

(3) In the absence of the Secretary of the military department concerned, or a designee, determine whether to approve or deny requests to conduct consensual interceptions (§ 42.7(a)(2)(i)).

(4) Provide overall policy guidance for the implementation of this part.

(b) The Assistant Secretary of Defense (Comptroller) (ASD(C)), or a designee, shall:

(1) In consultation with the DoD General Counsel, act for the Secretary of Defense to insure compliance with the provisions of this part.

(2) Receive, process, and transmit to the DoD General Counsel all requests from the heads of the DoD components, or their designees, for authority to conduct nonconsensual interception of wire and oral communications.

(3) Furnish to the Attorney General those reports required by § 42.7(f)(1) and provide a copy of such reports to the DoD General Counsel.

(4) Receive those reports required by § 42.7(f)(1) and provide a copy of such reports to the DoD General Counsel.

(c) The head of each DoD component or a designee shall insure compliance with the policies and procedures set forth or referenced in this part.

(d) The secretary of each military department, or a designee, shall:

(1) Determine whether to approve or deny requests to conduct consensual interceptions (§ 42.7(a)(2)(i)). This approval authority shall not be delegated to an official below the level of assistant secretary or assistant to the secretary of the military department.

(2) Review requests for nonconsensual interception of wire or oral communications (§ 42.7(a)(1)).

(3) Designate a control point of contact and so advise the DoD General Counsel and the ASD(C) for:

(i) Interception activities and related applications covered by this part.

(ii) Compilation of reports and forwarding other submissions to the ASD(C) as required by the provisions of this part.